

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

DAVID S. BOLIVER,

Plaintiff,

v.

MBNA AMERICA BANK, N.A.,

Defendant.

Civil Action No. 05-11346-MEL

**DEFENDANT'S MOTION TO DISMISS AND TO COMPEL ARBITRATION,  
OR, IN THE ALTERNATIVE, TO STAY COURT PROCEEDINGS PENDING  
COMPLETION OF ARBITRATION**

Defendant MBNA America Bank, N.A. ("MBNA") hereby moves pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 4, to dismiss the Complaint filed by Plaintiff David S. Boliver ("Boliver") and to compel Boliver to proceed with arbitration pursuant to the terms of the agreement between MBNA and Boliver. This Motion is supported by the accompanying Memorandum of Law and Exhibits annexed thereto. In addition, MBNA does not waive any rights and expressly reserves all remedies or defenses available to it, including the right to assert additional grounds for dismissal under Fed. R. Civ. P. 12, should the Court deny this Motion.

In support of its Motion, MBNA states that:

1. The claims in the Complaint are subject to a valid and binding arbitration agreement contained in Boliver's credit card agreement with MBNA, a copy of which is attached to the accompanying Memorandum as Exhibit A.

2. The FAA, the parties' agreement, Massachusetts law and Delaware law mandate that this Court dismiss the Complaint in light of the valid and enforceable nature of the Arbitration Clause in Boliver's agreement.

3. At a minimum, the FAA compels this Court to dismiss these proceedings pending the completion of arbitration. See 9 U.S.C. § 3.

WHEREFORE, for these reasons and the reasons in the accompanying Memorandum, MBNA respectfully requests that this Court grant its Motion and dismiss Boliver's Complaint. In the alternative, MBNA seeks to stay these proceedings pending the completion of arbitration.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), MBNA requests a hearing on this Motion.

MBNA AMERICA BANK, N.A.

By its attorneys,

/s/ Christopher B. Zimmerman  
Stephen A. Jonas (BBO #542005)  
John S. Rhee (BBO #650139)  
Christopher B. Zimmerman (BBO #653854)  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, Massachusetts 02109  
(617) 526-6000

Dated: September 2, 2005

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)

I, Christopher B. Zimmerman, hereby certify pursuant to Local Rule 7.1(A)(2) that I conferred with Njoroge Kamau, Esq., by telephone on September 1, 2005 to determine whether any of the disputed issues, as articulated in the accompanying Memorandum of Law, could be resolved, but no agreement was reached.

/s/ Christopher B. Zimmerman  
Christopher B. Zimmerman

CERTIFICATE OF SERVICE

I, Christopher B. Zimmerman, hereby certify that I have on this 2d day of September, 2005, served a true and accurate copy of the foregoing document by certified mail on Njoroge Kamau, Esq., P.O. Box 60251, Worcester, MA 01606.

/s/ Christopher B. Zimmerman  
Christopher B. Zimmerman